

108TH CONGRESS  
1ST SESSION

# S. 1553

To amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged in organized retail theft.

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## IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 21), 2003

Mr. CRAIG introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to combat, deter, and punish individuals and enterprises engaged in organized retail theft.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Organized Retail Theft  
5       Act of 2003”.

6       **SEC. 2. PROHIBITION AGAINST ORGANIZED RETAIL THEFT.**

7       (a) IN GENERAL.—Chapter 103 of title 18, United  
8       States Code, is amended by adding at the end the fol-  
9       lowing:

1 **“§ 2120. Organized retail theft**

2       “(a) IN GENERAL.—Whoever in any material way or  
3 degree obstructs, delays, or affects commerce or the move-  
4 ment of any article or commodity in commerce, by taking  
5 possession of, carrying away, or transferring or causing  
6 to be carried away, with intent to steal, any goods offered  
7 for retail sale with a total value exceeding \$1,000, but not  
8 exceeding \$5,000, during any 180-day period shall be  
9 fined not more than \$1,000, imprisoned not more than  
10 1 year, or both.

11       “(b) HIGH VALUE.—Whoever in any material way or  
12 degree obstructs, delays, or affects commerce or the move-  
13 ment of any article or commodity in commerce, by taking  
14 possession of, carrying away, or transferring or causing  
15 to be carried away, with intent to steal, any goods offered  
16 for retail sale with a total value exceeding \$5,000, during  
17 any 180-day period, shall be fined under this title, impris-  
18 oned not more than 10 years, or both.

19       “(c) RECEIPT AND DISPOSAL.—Whoever receives,  
20 possesses, conceals, stores, barter, sells, disposes of, or  
21 travels in interstate or foreign commerce, with the intent  
22 to distribute, any property which the person knows, or  
23 should know has been taken or stolen in violation of sub-  
24 section (a) or (b), or who travels in interstate or foreign  
25 commerce, with the intent to distribute the proceeds of  
26 goods which the person knows or should know to be the

1 proceeds of an offense described in subsection (a) or (b),  
2 or to otherwise knowingly promote, manage, carry on, or  
3 facilitate an offense described in subsection (a) or (b),  
4 shall be fined or imprisoned as provided in subsection (a)  
5 if the actions involved a violation of subsection (a) and  
6 as provided in subsection (b) if the actions involved a vio-  
7 lation of subsection (b).

8 “(d) ENHANCED PENALTIES.—

9 “(1) ASSAULT.—Whoever, in committing, or in  
10 attempting to commit, any offense defined in sub-  
11 sections (a) and (b) of this section, assaults any per-  
12 son, or puts in jeopardy the life of any person by the  
13 use of a dangerous weapon or device, shall be fined  
14 under this title, imprisoned not more than 25 years,  
15 or both.

16 “(2) DEATH AND KIDNAPPING.—Whoever, in  
17 committing any offense under this section, or in  
18 avoiding or attempting to avoid apprehension for the  
19 commission of such offense, or in freeing himself or  
20 attempting to free himself from arrest or confine-  
21 ment for such offense, kills any person, or forces any  
22 person to accompany him without the consent of  
23 such person, shall be imprisoned not less than 10  
24 years, or if death results shall be punished by death  
25 or life imprisonment.

1 “(e) FORFEITURE AND DISPOSITION OF GOODS.—

2 “(1) IN GENERAL.—Whoever violates this sec-  
3 tion shall forfeit to the United States, irrespective of  
4 any provision of State law any interest in the retail  
5 goods the person knows or should know to have been  
6 acquired or maintained in violation of this section.

7 “(2) INJUNCTIONS AND IMPOUNDING, FOR-  
8 FEITURE, AND DISPOSITION OF GOODS.—

9 “(A) INJUNCTIONS AND IMPOUNDING.—In  
10 any prosecution under this subsection, upon  
11 motion of the United States, the court may—

12 “(i) grant 1 or more temporary, pre-  
13 liminary, or permanent injunctions on such  
14 terms as the court determines to be rea-  
15 sonable to prevent or restrain the alleged  
16 violation; and

17 “(ii) at any time during the pro-  
18 ceedings, order the impounding on such  
19 terms as the court determines to be rea-  
20 sonable, of any good that the court has  
21 reasonable cause to believe was involved in  
22 the violation.

23 “(B) FORFEITURE AND DISPOSITION OF  
24 GOODS.—Upon conviction of any person of a

violation under this subsection, the court shall—

“(i) order the forfeiture of any good involved in the violation or that has been impounded under subparagraph (A)(ii);

“(ii) either—

“(I) order the disposal of the good by delivery to such Federal, State, or local government agencies as, in the opinion of the court, have a need for such good, or by gift to such charitable or nonprofit institutions as, in the opinion of the court, have a need for such good, if such disposition would not otherwise be in violation of law and if the manufacturer consents to such disposition; or

“(II) order the return of any goods seized or impounded under subparagraph (A)(ii) to their rightful owner; and

“(iii) find that the owner of the goods seized or impounded under subparagraph (A)(ii) aided in the investigation and order

1           that such owner be reimbursed for the ex-  
2           penses associated with that aid.

3           “(C) TERMS.—For purposes of remission  
4           and mitigation of goods forfeited to the Govern-  
5           ment under this subsection, the provisions of  
6           section 981(d) of this title shall apply.

7           “(f) CIVIL REMEDIES.—

8           “(1) IN GENERAL.—Any person injured by a  
9           violation of this section, or who demonstrates the  
10          likelihood of such injury, may bring a civil action in  
11          an appropriate United States district court against  
12          the alleged violator. The complaint shall set forth in  
13          detail the manner and form of the alleged violation.

14          “(2) INJUNCTIONS AND IMPOUNDING AND DIS-  
15          POSITION OF GOODS.—In any action under para-  
16          graph (1), the court may—

17               “(A) grant 1 or more temporary, prelimi-  
18               nary, or permanent injunctions upon the post-  
19               ing of a bond at least equal to the value of the  
20               goods affected and on such terms as the court  
21               determines to be reasonable to prevent or re-  
22               strain the violation;

23               “(B) at any time while the action is pend-  
24               ing, order the impounding upon the posting of  
25               a bond at least equal to the value of the goods

1           affected and, on such terms as the court deter-  
2           mines to be reasonable, if the court has reason-  
3           able cause to believe the goods were involved in  
4           the violation; and

5           “(C) as part of a final judgment or decree,  
6           in the court’s discretion, order the restitution of  
7           any good involved in the violation or that has  
8           been impounded under subparagraph (B).

9           “(3) DAMAGES.—In any action under para-  
10          graph (1), the plaintiff shall be entitled to recover  
11          the actual damages suffered by the plaintiff as a re-  
12          sult of the violation, and any profits of the violator  
13          that are attributable to the violation and are not  
14          taken into account in computing the actual damages.  
15          In establishing the violator’s profits, the plaintiff  
16          shall be required to present proof only of the viola-  
17          tor’s sales, and the violator shall be required to  
18          prove all elements of cost or deduction claimed.

19          “(4) COSTS AND ATTORNEY’S FEES.—In any  
20          action under paragraph (1), in addition to any dam-  
21          ages recovered under paragraph (3), the court in its  
22          discretion may award the prevailing party its costs  
23          in the action and its reasonable attorney’s fees.

24          “(5) REPEAT VIOLATIONS.—

1           “(A) TREBLE DAMAGES.—In any case in  
 2           which a person violates this section within 3  
 3           years after the date on which a final judgment  
 4           was entered against that person for a previous  
 5           violation of this section, the court may, in its  
 6           discretion, in an action brought under this sub-  
 7           section, increase the award of damages for the  
 8           later violation to not more than 3 times the  
 9           amount that would otherwise be awarded under  
 10          paragraph (3), as the court considers appro-  
 11          priate.

12           “(B) BURDEN OF PROOF.—A plaintiff that  
 13           seeks damages described in subparagraph (A)  
 14           shall bear the burden of proving the existence  
 15           of the earlier violation.

16           “(g) DEFINITION.—In this section, the term ‘value’  
 17           has the meaning given that term in section 2311 of this  
 18           title.”.

19           (b) CONFORMING AMENDMENT.—The table of sec-  
 20           tions for chapter 103 of title 18, United States Code, is  
 21           amended by inserting at the end the following:

“2120. Organized retail theft.”.



1 **SEC. 3. COMMISSION OF ORGANIZED RETAIL THEFT A**  
2 **PREDICATE FOR RICO CLAIM.**

3 Section 1961(1) of title 18, United States Code, is  
4 amended by adding “, section 2120 (relating to organized  
5 retail theft)” before “, sections 2251”.

6 **SEC. 4. FLEA MARKETS.**

7 (a) PROHIBITIONS.—No person at a flea market shall  
8 sell, offer for sale, or knowingly permit the sale of any  
9 of the following products:

10 (1) Baby food, infant formula, or similar prod-  
11 ucts used as a sole or major source of nutrition,  
12 manufactured and packaged for sale for consump-  
13 tion primarily by children under 3 years of age.

14 (2) Any drug, food for special dietary use, cos-  
15 metic, or device, as such terms are defined in the  
16 Federal Food, Drug, and Cosmetic Act and regula-  
17 tions issued under that Act.

18 (b) EXCLUSION.—Nothing in this section shall pro-  
19 hibit a person from engaging in activity otherwise prohib-  
20 ited by subsection (a), in the case of a product described  
21 in subsection (a)(2), if that person maintains for public  
22 inspection written documentation identifying the person as  
23 an authorized representative of the manufacturer or dis-  
24 tributor of that product.

25 (c) FLEA MARKET DEFINED.—

1           (1) IN GENERAL.—As used in this section, the  
2       term “flea market” means any physical location,  
3       other than a permanent retail store, at which space  
4       is rented or otherwise made available to others for  
5       the conduct of business as transient or limited ven-  
6       dors.

7           (2) EXCLUSION.—For purposes of paragraph  
8       (1), transient or limited vendors shall not include  
9       those persons who sell by sample or catalog for fu-  
10      ture delivery to the purchaser.

11       (d) CRIMINAL PENALTIES.—Any person who willfully  
12      violates this section shall be punished as provided in sec-  
13      tion 2120 of title 18, United States Code.

14      **SEC. 5. ATTORNEY GENERAL REPORTING REQUIREMENTS.**

15       Beginning with the first year after the date of enact-  
16      ment of this Act, the Attorney General shall include in  
17      the report of the Attorney General to Congress on the  
18      business of the Department of Justice prepared pursuant  
19      to section 522 of title 28, United States Code, an account-  
20      ing, on a district by district basis, of the following with  
21      respect to all actions taken by the Department of Justice  
22      that involve organized retail theft (as punishable under  
23      section 2120 of title 18, United States Code, as added by  
24      this Act), including—

25           (1) the number of open investigations;

- 1           (2) the number of cases referred by the United  
2       States Customs Service;
- 3           (3) the number of cases referred by other agen-  
4       cies or sources; and
- 5           (4) the number and outcome, including settle-  
6       ments, sentences, recoveries, and penalties, of all  
7       prosecutions brought under section 2120 of title 18,  
8       United States Code.

